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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/733,190	12/08/2000	Eric S. Michlowitz	M-9865 US	3158
33438 7590 01/19/2007 HAMILTON & TERRILE, LLP P.O. BOX 203518 AUSTIN, TX 78720			EXAMINER STERRETT, JONATHAN G	
			ART UNIT 3623	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
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Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/733,190

Applicant(s)

MICHLOWITZ ET AL.

Examiner

Jonathan G. Sterrett

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 14-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 14-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 9, 2006 has been entered.

This Non-Final Office Action is responsive to applicant's amendment filed November 9, 2006. Currently **Claims 1-11 and 14-22** are pending.

Response to Arguments

2. Applicant's arguments with respect to **Claims 1-11 and 14-22** have been fully considered but are not persuasive.

3. The applicant argues on pages 8 and 9 that Claims 1-11, 14-16, 21 and 22 are statutory re USC 101 because they accomplish a practical result of evaluating the performance of a supplier by generating an indicia of the performance of the suppliers.

The examiner agrees in response to the amendments to the claims that the invention provides for a useful result and is tangible. However, the invention does not provide for a concrete result (i.e. as claimed is substantially repeatable). Please see the 101 rejection below.

4. Applicant's arguments regarding **Claims 1, 9, 14, 15, 17 and 21** fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. While it appears that the applicant is providing an argument to point out where the cited references do not teach claim limitations, in actuality the applicant has listed the claimed limitations altogether with an assertion that they are not taught by the cited references. This does not meet the requirements of 1.111(b) because it does not specifically point out how the language of the claims distinguishes them from the references.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. **Claim 1-11, 14, 21, 22** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Under the statutory requirement of 35 U.S.C. § 101, a claimed invention must produce a useful, concrete, and tangible result. For a claim to be useful, it must yield a result that is specific, substantial, and credible (MPEP § 2107). A concrete result is one that is substantially repeatable, i.e., it produces substantially the same result over and over again (*In re Swartz*, 232 F.3d 862, 864, 56 USPQ2d 1703, 1704 (Fed. Cir. 2000)). In order to be tangible, a claimed invention must set forth a practical application that

generates a real-world result, i.e., the claim must be more than a mere abstraction (*Benson*, 409 U.S. at 71-72, 175 USPQ at 676-77). Additionally, a claim may not preempt abstract ideas, laws of nature or natural phenomena nor may a claim preempt every "substantial practical application" of an abstract idea, law of nature or natural phenomena because it would in practical effect be a patent on the judicial exceptions themselves (*Gottschalk v. Benson*, 409 U.S. 63, 71-72 (1972)). (Please refer to the "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" for further explanation of the statutory requirement of 35 U.S.C. § 101.)

Regarding independent **Claims 1, 9, 14 and 21**, the claims cite steps for providing for an assessment of a supplier. The claims provide for a tangible result and a result that has utility, however the steps do not provide for a concrete result.

These steps would provide an output (i.e. a supplier rating) that is substantially different, depending on the individual that is utilizing the claim steps.

Thus, one individual using the claimed invention could realize a substantially different outcome than another individual, even assuming that they had the same experience with a supplier. Because the claims may be used as such to provide different outcomes, the invention as claimed does not provide for a result that is substantially repeatable, and therefore does not provide a **concrete** result.

Because **Claims 1, 9, 14 and 21** do not provide for a concrete result, these claims are rejected under 35 USC 101. **Claims 2-8, 10, 11 and 22** depend on **Claims 1, 9, 14 and 21**, they are also not statutory under 35 USC 101 at least for the reasons

given above.

Examiner comment: Regarding the concrete (i.e. substantially repeatable) aspect of the 101 rejection above, the examiner provides the following example. Let's say two users of the invention wanted to provide managerial review of a supplier's performance rating. We'll call the first user "Fred" and the supplier he is reviewing, we'll call "Judy". The claims do not tell Fred how to provide Judy's performance ratings. The claims state that the rating is based upon Fred's experience, but nothing more specific than Fred's "experience". In fact, as stated by the claim, Fred will have to determine his own scoring approach to provide a performance rating of Judy.

If the second user whom we'll call "Sally" attempts to utilize the invention for also evaluating Judy's performance rating, then Sally will have to repeat the learning and experimentation process that Fred went through, even and especially if Sally has the same experience with Judy that Fred had. Since the claims only state that the evaluation is based upon the individual's experience with the supplier, Sally will provide a substantially different result based on her knowledge and experimentation, even though Sally and Fred are evaluating the same candidate according to the same assumed experience. Because the repeatability of the results depends on the users and not what is specified by the claims, the invention is not substantially repeatable and therefore is not patentable under the "concrete" requirements of USC 101.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 1-3, 9, 14 and 21** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Powers US 2002/0040309** in view of the PRTM Reference C:

Supply Chain Council Presentation of May 12, 1999 by Scott Stephens detailing the Supply Chain Operations Reference Model. Note footnote on page 8 that PRTM organized the Supply Chain Council. This Reference hereafter known as **Reference C**.

Regarding **Claim 1**, Powers discloses:

receiving a first evaluation of the supplier submitted electronically by a team member of a customer of the supplier into a customer website,

paragraph 21 line 3-5, performance evaluation system evaluates performance of a group, including for a supplier.

Paragraph 44 line 2-6, 11, Users use the performance evaluation system to enter evaluations into the system.

Paragraph 28 line 1-2, the system provides average scores for a particular member or level of the organization. An average evaluation score would include at least a first evaluation. Also paragraph 29 line 6-8, scores for users and hierarchy

levels are charted. The plurality of evaluation scores entered into the system means that at least a first evaluation would be entered. Figure 2 shows a plurality of users who would enter evaluations into system.

Paragraph 36 line 3-6, users can access the performance evaluation system over the internet to enter evaluations.

receiving a second evaluation of the supplier submitted electronically by a team leader of the customer into a customer website.

Paragraph 21 line 3-5, performance evaluation system evaluates performance of a group, including for a supplier.

Figure 2 #104, product manager is a user of the system. The rest of Figure 2 shows a plurality of users who would enter evaluations into the system.

Paragraph 44 line 2-6, 11, product B manager (user 35) can use the performance evaluation system to enter evaluations. The users are the people in the system that perform the evaluations.

Paragraph 28 line 1-2, the system provides average scores for a particular member or level of the organization. An average evaluation score would include a second evaluation. Also paragraph 29 line 6-8, scores for users and hierarchy levels are charted. The plurality of evaluation scores entered into the system means that at least a second evaluation would be entered.

Paragraph 24 line 2-5, web pages can be downloaded to interface with invention.

Paragraph 36 line 3-6, users can access the performance evaluation system over the internet to enter evaluations.

receiving a third evaluation of the supplier submitted by the supplier into a customer website,

Paragraph 21 line 3-5, performance evaluation system evaluates performance of a group, including for a supplier.

Figure 2 #104, product manager is a user of the system.

Paragraph 44 line 2-6, 9, service manager (user 10) can use the performance evaluation system to enter evaluations. The service manager is head of a group that supplies service to the rest of the organization.

Figure 2, the service organization contains three members, a service manager (user 10), and service agents (users 11 and 12). A service manager evaluating the service organization would include providing at least a third evaluation.

Paragraph 36 line 3-6, users can access the performance evaluation system over the internet to enter evaluations.

and generating an indicia of a supplier's performance based on the first, second and third evaluation, the supplier being chosen from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

paragraph 21 line 3-5, performance evaluation system evaluates performance of a group, including for a supplier (i.e. service provider).

Paragraph 28 line 1-2, summary reports provide average scores for a particular organizational level, including for a supplier. The average scores are based on the input evaluations, including for a first, second and third evaluation combined.

Figure 3 #124, para 39, Although Powers teaches that an internal service provider (i.e. supplier) can be evaluated by the invention, the description of the type of supplier as cited does not add patentable weight to the claim and is considered by the examiner to be nonfunctional descriptive material. The receiving of 3 evaluation reports to generate an indicia, as cited, is not structurally changed by specifying who is providing the reports.

Powers teaches where the questions that are answered are based on an individual's experience with the person being evaluated.

Powers teaches the need to have an evaluation system that crosses organizational boundaries (i.e. that is not confined to a given organizational boundary, see para 5). (Note para 46, workers who are working in a call center but are hired from a particular agency can be tracked).

Powers further teaches various team members that comprise groups in the evaluation process (para 38).

Power's invention generally addresses different groups operating within the organization of a call center (para 37 and 38). Here there are service groups that are being evaluated that provide service to other groups.

Powers does not teach:

(1) where the supplier is in an organization that is separate from the customer.

(2) where the supplier is evaluated across an organizational boundary (i.e.

people are evaluated individually within their organizational group – not a group evaluating another group).

However is taken that it is old and well known for suppliers to be in an organization that is separate from the customer and to be evaluated as a separate organization (see page 17 of Reference C where "manage sourcing infrastructure" includes vendor certification and feedback; this presentation deals with a model for managing and measuring a company's supply chain performance and measuring the performance of those who are providing service to the customers; see also the Level 1 SCOR scorecard on page 21).

Both Reference C and Powers are addressing measuring performance in a business context, thus both Reference C and Powers are analogous art.

Reference C teaches the need to manage and measure in concert supply chains that involve a company, the suppliers that supply that company, and the customers provided for by that company (note the interlocking supply chains illustrated on page 12). The supply chain scorecard on page 22 indicates a level of performance provided by benchmarking. Reference C suggests here that this approach provides for having a target to be able to improve one's supply chain performance. Page 13 teaches that applying the SCOR principles of measuring suppliers and measuring oneself as a supplier enable a company to achieve 'best-in-class' performance. Best in class performance is interpreted by the examiner to be a state of competitive performance that provides the best supply chain performance to customers, i.e. it ensures a company is competing on a level that enables it to successfully compete against other firms.

One of ordinary skill in the art at the time of the invention would modify the teachings of Powers, regarding using individual team members to provide for scored assessments of scoring, to include the step of measuring suppliers across individual boundaries, where the supplier also provides an assessment of themselves, as taught by Reference C, because it would result in a company that improves their performance capability in the business environment by providing a way to measure performance.

Regarding **Claim 2**, Powers teaches:

**generating and providing a report representing the indicia of the
supplier's performance**

Paragraph 105 line 3-4, system generates and provides reports and charts based on entered evaluation data.

Regarding **Claim 3**, Powers discloses:

providing access for the supplier to view electronically the indicia of the performance of the supplier's performance.

Paragraph 24 line 2-5, user interface allows web pages to be displayed.

Paragraph 29 line 6-8, productivity and quality scores are provided for hierarchical levels being evaluated, including for servicing and supplier organizations.

Claim 9 is rejected under the same rationale as **Claim 1**.

Claim 14 is rejected under the same rationale as **Claim 1**.

Claim 21 is rejected under the same rationale as **Claim 1**.

9. **Claims 4-8, 10-11 and 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Powers US 2002/0040309** in view of PRTM's Performance Management Group benchmarking service (referred to hereafter as **PRTM**) as disclosed in the following documents:

Supply Chain Council's webpage newsletter of November 1998 describing PRTM's online supply-chain benchmarking, pages 4-5, hereafter referred to as

Reference A.

PRTM's webarchive.org webpage of December 5, 1998; page 3 that details PRTM's supply chain benchmarking approach, hereafter referred to as **Reference B.**

Supply Chain Council Presentation of May 12, 1999 by Scott Stephens detailing the Supply Chain Operations Reference Model. Note footnote on page 8 that PRTM organized the Supply Chain Council. This Reference hereafter known as **Reference C.**

PRTM press release, "High-Tech Management Consultants PRTM Launch Online Benchmarking Company", March 1999, pp.1-2. This Reference hereafter known as **Reference D.**

PRTM press release, "University of Michigan/OSAT and The Performance Measurement Group Launch a New Benchmarking Initiative for the Automotive Industry", January 21, 2000. This Reference hereafter known as **Reference E.**

Regarding **Claim 4**, Powers does not teach:

providing access for the supplier to view electronically an indicia of the performance of all suppliers in a class of components

PRTM teaches:

providing access for the supplier to view electronically an indicia of the performance of all suppliers in a class of components.

Reference B page 1 paragraph 6, suppliers benchmarked in a class of components include 'computers and electronic equipment' and 'semiconductors'.

Reference D page 1 paragraph 2 line 3-6, participants can receive benchmarking data reports online to view an indicia of the performance of all suppliers.

Reference A page 5 paragraph B line 3, PRTM's benchmarking provides comparative performance data for a variety of industries.

PRTM teaches that benchmarking suppliers provides full visibility into the strengths and weaknesses of a manufacturing operation and leads to improvements in supply chain performance (Reference B page 3 paragraph D line 5-8, 8-11).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Powers, regarding entering supplier evaluations, to include providing access to a supplier to view an indicia of suppliers in a class of components, as taught by PRTM, because it would lead to improvements in supply chain performance through providing full visibility into the strengths and weaknesses of a manufacturing operation.

Regarding **Claim 5**, Powers does not teach:

communicating an indicia of the performance of the supplier to members of a manufacturing organization.

PRTM teaches:

communicating an indicia of the performance of the supplier to members of a manufacturing organization.

Reference D page 1 paragraph 1 line 5, supply chain performance is benchmarked and reports are provided to clients.

Reference B page 3 paragraph d line 1-2, metrics are provided in the benchmark study for the entire manufacturing enterprise, including to members of a manufacturing organization.

Reference B page 1 paragraph 2 line 4 – paragraph 3 line 1-2, PRTM provides performance measurement information as part of their benchmarking process.

PRTM teaches that benchmarking suppliers provides full visibility into the strengths and weaknesses of a manufacturing operation and leads to improvements in supply chain performance (Reference B page 3 paragraph D line 5-8, 8-11). This occurs because benchmarking indicates how a supplier performs in comparison to other suppliers and reveals particular areas where improvements are needed.

Communicating the results of a supply chain benchmarking effort, as taught by PRTM, to members of a manufacturing organization is part of their benchmarking process.

Reference C page 22 illustrates a SCOR Level 1 scorecard which is used for this purpose since it is a summary of top level supply chain performance metrics used to communicate supply chain performance.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Powers, regarding entering supplier evaluations, to include communicating the performance of a supplier to members of a manufacturing organization because it would lead to improvements in supply chain performance through providing full visibility into the strengths and weaknesses of supply chain performance.

Regarding **Claim 6**, Powers does not teach:

analyzing the performance of a supplier based on the performance of the best supplier in the class of suppliers.

PRTM teaches:

analyzing the performance of a supplier based on the performance of the best supplier in the class of suppliers.

Reference C page 22 Item 5, "Superior" category in Level 1 performance scorecard constitutes 'best in class' performance for that particular metric or indicia. The Level 1 scorecard provides an analysis of 'best in class' and also a range of performance from parity to superior in a category to provide an analysis of where a particular supplier performs in respect to that particular metric.

Reference A page 5 paragraph B line 3, comparative performance data from companies would provide analysis of supplier performance based on best and worst suppliers in a class of suppliers.

Reference C page 23, the chart on this page shows "BIC" or "Best in Class" analysis for various suppliers in a class of suppliers, eg 'computers' and 'telecom'.

PRTM teaches that benchmarking suppliers provides full visibility into the strengths and weaknesses of a manufacturing operation and leads to improvements in supply chain performance (Reference B page 3 paragraph D line 5-8, 8-11). This occurs because benchmarking indicates how a supplier performs in comparison to other suppliers and reveals particular areas where improvements are needed. Analyzing the performance of the best supplier in a group of suppliers, as taught by PRTM, is a part of their benchmarking process. Reference C page 23 illustrates an analysis of various 'best in class' or BIC suppliers in various measures of supply chain performance. For example, BIC order fulfillment lead time (OFLT) for Industrial Companies declined from 9 days in 1996 to 4 days in 1997. Average OFLT for the same period ranges from 42 to 30 days respectively. The chart shows that there is a wide variation between an average company in the Industrial group and a BIC company. Analyzing the performance across the spectrum of supply chain metrics, as taught by PRTM, shows where a company is weakest and where efforts need to be concentrated to improve supply chain management performance.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Powers, regarding evaluation of suppliers to include analyzing BIC performance of a supplier, as taught by PRTM, because it would enable a company to improve supply chain management performance by focusing resources on the greatest opportunities for improvement.

Regarding **Claim 7**, Powers does not teach:

analyzing the performance based on improvements required by a manufacturer.

PRTM teaches:

analyzing the performance based on improvements required by a manufacturer.

Reference E page 1 paragraph 4 line 3-5, private scorecards for automotive suppliers provide analysis of performance based on improvements required. The required improvements are necessary for an auto supplier to deliver on their value proposition.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Powers regarding evaluation of suppliers, to include analyzing the performance based on improvements required by a manufacturer, as

taught by PRTM, because it would enable a company to achieve improvements necessary to deliver on its value proposition to customers.

Regarding **Claim 8**, Powers teaches:

agreeing to future performance targets.

Paragraph 60 line 9-11, agreed-to performance targets are entered into the system.

Paragraph 93, productivity is calculated based on performance achieved over agreed-to performance target.

Regarding **Claim 10**, Powers teaches:

wherein the computer system is configured to communicate over a network and to receive evaluations submitted from a second computer system across the network.

Paragraph 24 line 2-5, web pages can be downloaded to interface with invention.

Paragraph 23 line 1-3, client and server platforms for evaluation system are connected by a network.

Paragraph 36 line 3-6, users can access the performance evaluation system over the internet to enter evaluations. This would require a second computer operating across the network.

Regarding **Claim 11**, Powers teaches:

wherein the network is a public global communication network.

Paragraph 23 line 1-3, client and server platforms for evaluation system are connected by a network, including the Internet, which is a public global communication network.

Claim 22 is rejected under the same rationale as **Claim 5**.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

11. **Claims 15-20** are rejected under 35 U.S.C. 102(a) as being anticipated by PRTM.

Regarding **Claim 15**, PRTM discloses:

a computer system including a data storage device,

Reference E page 2 paragraph 2, PMG uses a database for storing benchmarking data for their online benchmarking service.

Reference D paragraph 2 line 3-6, PMG provides an online benchmarking service that utilizes a computer system to enter data sets and receive data reports.

the data storage device storing data for a supplier performance among suppliers supplying a class of components comprising:

Reference E page 2 paragraph 2, PMG uses a database for storing supply chain management benchmarking data.

Reference E page 2 paragraph 1, PMG's benchmarking data is mapped against the SCOR model, which includes data for a supplier performance among suppliers supplying a class of components.

Reference C page 22, "Supply Chain Scorecard" provides "performance versus competitive population" which is the data for a supplier performance among suppliers supplying a class of components.

quality (Reference C page 22 Item 1, Delivery Performance/Quality is a SCOR Level 1 metric),

cost (Reference C page 22 Item 2, Cost is a SCOR Level 1 metric),

availability (Reference C page 22 Item 3, Fill Rates measure how orders are filled and hence measures availability of product),

service performance (Reference C page 22 Item 4, Delivery Performance to Commit Date measures level of service provided to customers once a delivery date has been committed) and

top performers (Reference A, Paragraph B, Line 4, best practices of top performers),

the supplier being chose from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

Reference C page 18, the SCOR model used by PRTM clearly includes a manufacturer manufacturing a component (i.e. "production execution"). As above for claim 1, the limitation cited here for claim 15 is considered nonfunctional descriptive material.

Regarding the type of data being stored in the database, the fact that the supplier is part of an organization that is external to a customer has little being on the patentability of the claim because (1) the recitation is cited in the preamble and (2) the organizational location of the supplier (i.e. external vs. an internal supplier) does not affect how the data is stored.

Regarding **Claim 16**, PRTM discloses:

a server wherein the computer system and the server are configured to communicate over a network and receive evaluations submitted from a second computer system across the network.

Reference D page 1 paragraph 2 line 5-6, participants in the online benchmarking study can submit data, ie supply chain evaluations, from their computer over the internet to the PRTM server that is providing the benchmarking web service. See also Reference A Paragraph A Lines 2-3.

Regarding **Claim 17**, PRTM discloses:

determining a best supplier in a class of suppliers, wherein the class of suppliers are those suppliers supplying a component to a manufacturer, the determining being performed by a computer system.

Reference E page 2 paragraph 2, PMG uses a web-accessible database for storing supply chain management benchmarking data.

Reference E page 2 paragraph 1, PMG's benchmarking data is mapped against the SCOR model, which includes data for a supplier performance among suppliers supplying a class of components. Since the SCOR model is provided online, the determining of a BIC supplier is performed by a computer system.

Reference D page 2 paragraph 2 line 4-6, PMG provides benchmarking, including determining 'best in class' or BIC, as part their online benchmarking service.

the supplier being chose from a group consisting of a manufacturer manufacturing a component, an assembler assembling a component, a vendor and a service provider.

Reference C page 18, the SCOR model used by PRTM clearly includes a manufacturer manufacturing a component (i.e. "production execution"). As above for claim 1, the limitation cited here for claim 15 is considered nonfunctional descriptive material.

Regarding **Claim 18**, PRTM discloses:

determining an indicia of quality of a component supplied by the supplier to the manufacturer.

Reference C Item 1, Delivery Performance/Quality is a SCOR Level 1 Scorecard metric for measuring quality of a component supplied by a supplier to a manufacturer. In this case quality is primarily measured by perfect order fulfillment.

Regarding **Claim 19**, PRTM discloses:

determining a cost of a component provided by a supplier

Reference C Item 2, Cost is a Level 1 Scorecard metric comprising three different areas of supply chain cost directly associated with components supplied.

Regarding **Claim 20**, PRTM discloses:

determining an indicia of availability of components supplied by a supplier.

Reference C, Item 3, Fill Rate measures how available components are when an order is filled.

Conclusion

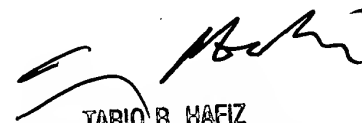
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is 571-272-6881. The examiner can normally be reached on 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JGS 1-14-2007



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